In case one of the judges withdraws before the decision of award is rendered, the remaining judges shall, if need be, have power to elect a substitute. The committee of judges shall make rules governing its own procedure.

The announcement of the award shall be made, if possible, before April 1st, 1902. The amount of the prize may be divided among two or more essays if these appear of essentially equal value. The prize essay may be published by the Association.

The publication of a work submitted, or of any part thereof, before the prize is awarded, excludes the work from the competition or further consideration by the judges.

The committee of judges shall open only that one of the sealed envelopes, sent in with the manuscripts, which corresponds to the winning essay. The unsuccessful manuscripts must be recalled by the authors within one year after the announcement of the award: otherwise they become the property of the International Association, which may then either publish them anonymously, or destroy them. In case the return of a manuscript is demanded, and the right to the same of the person making the demand is not sufficiently clear otherwise, the accompanying sealed envelope may be opened for identification.

It is permissible to each competitor, at the time when the manuscript is submitted, to give an address to which it shall be returned within the stipulated time. The property in the essay which receives the prize, especially the right of translation and publication, passes with the payment of the amount of the prize to the Berlin International Association for Comparative Jurisprudence and Economics.

THE CONSTITUTION AND HAWAII. — Two recent cases before the Supreme Court of the Hawaiian Islands decide, in effect, that the Constitution of the United States is not to-day in force in Hawaii. The report of both cases may be found in "The Pacific Commercial Advertiser" (Honolulu) of June 10, 1899. In the first, *Peacock* v. *Hawaii*, it was held that the custom duties of Hawaii in force before annexation could be collected, in spite of Article I. §§ 8 and 9, of the Constitution; in the second, *Hawaii* v. *Edwards*, that a felon may be convicted, as permitted by the Hawaiian statutes, by nine jurors and without a petit jury, in spite of the fifth and sixth amendments to the Constitution. The course of reasoning of the court may be summarized as follows: The Constitution was not extended to Hawaii by the Joint Resolution of annexation. Whether or not the Constitution is ultimately applicable to it *ex proprio vigore* it does not necessarily apply immediately on acquisition. The power to acquire territory carries with it, as a necessary incident, the power to continue in force the laws of the territory acquired during a transition period before complete incorporation into the United States. Such an incident is practically a necessary one, without which the power to make acquisition may often be crippled — and it cannot be assumed that the Constitution intended such a result. Further, this temporary period has not, in the present cases, extended beyond a reasonable time — and even if it had, the question would be a political one with which the courts would have nothing to do. The opinions suggest a slightly different form of argument which presents their view perhaps more plausibly. If the United States should, by treaty, acquire territory on the express condition that

the Constitution should not apply until Congress should see fit, it can scarcely be contended that there is anything in the Constitution which would invalidate that condition. And there is no essential difference between that case and the present situation in Hawaii, though Hawaii was annexed by joint resolution. As the court frankly state, "While the actual decisions may be generally accounted for on other grounds, and while the *dicta* are not always consistent and not always favorable to the proposition," the principle on which the two cases are decided seems in accord with the prevailing view.

The result and the general doctrine seem equally satisfactory. A transition period very similar to the one decided for Hawaii existed in fact for Louisiana at the time it was added to the United States. Such a period will, almost undoubtedly, be fortunate, at least so far as it extends to such of our new possessions as are like the Philippines; it will relieve a partially civilized people from the burden of a constitution which is at present obviously unsuited for them and enable the national government to build up — with a much freer hand — an efficient colonial system. The whole question is essentially a political one. It seems probable that national policy will require that transition period to extend indefinitely, that any judicial interference would be most ill-advised.

PART PERFORMANCE OF ULTRA VIRES CONTRACTS. — Indiscriminate use of the term *ultra vires* has caused confusion as to the liability of corporations in contract. By clearing the ground of *dicta* based on contracts improperly called *ultra vires,* a recent decision has reached results at least logical. *National Home Building and Loan Association* v. *Home Savings Bank*, 54 N. E. Rep. 619 (Ill.). The defendant corporation contracted for an exchange of building lots, and as part of the consideration agreed to assume a mortgage in favor of the plaintiff on the lot received. The plaintiff filed a foreclosure bill and asked for a deficiency decree against the defendant on its contract with the original mortgagor, who was also made a party. The defendant did not oppose the foreclosure, and offered to return the lot to the mortgagor, but denied personal liability on the mortgage. The court held that since the contract was beyond the chartered powers of the corporation, no claim could be founded on it.

In cases like this there has long been a remarkable conflict of authority. In most jurisdictions, though enforcement of *ultra vires* contracts still wholly executory has been refused, yet where the corporation has received the benefit of performance by the plaintiff, as in the present case, an action has been allowed. *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159; *Camden Ry. Co.* v. *Mays Landing Co.*, 48 N. J. Law, 530. It had generally been supposed that the law of Illinois was in accordance with this doctrine. *Eckman* v. *Ry. Co.*, 169 Ill. 312. The principal case is, therefore, an unexpected accession to the cases which take the opposite view. *Central Transp. Co.* v. *Pullman Co.*, 139 U. S. 24; *Davis* v. *Old Colony Ry. Co.*, 131 Mass. 258. These cases hold that since a corporation, within the limits of its charter, is privileged beyond individuals, it is against public policy to let it extend that sphere of privilege, — that *ultra vires* contracts are, therefore, always unenforceable.

When carried to its logical extreme, as in the principal case, this doctrine would seem at times to work unnecessary hardship. Courts may